

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

Case No.

1-08-01789

SIPC V. MADOFF,

Debtor.

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August 6, 2009

United States Custom House  
One Bowling Green  
New York, New York 10004

In Re First Application for Interim Professional  
Compensation for Services Rendered and Reimbursement of  
Actual and Necessary Expenses Incurred for Baker &  
Hostetler LLP, et al.

B E F O R E:

HON. BURTON R. LIFLAND,

U.S. Bankruptcy Judge

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A P P E A R A N C E S:

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3

4 BAKER HOSTETLER, LLP

5 Attorneys for Irving H. Picard, SIPA Trustee

6 45 Rockefeller Plaza

7 New York, New York 10017

8 BY: MARC E. HIRSCHFIELD, ESQ.

9 -and-

10 DAVID J. SHEEHAN, ESQ.

11 -and-

12 ALISSA M. NANN, ESQ.

13 -and-

14 IRVING H. PICARD, BLMIS Trustee

15

16

17

18 MILBERG LLP

19 Attorneys for Unofficial

20 Committee of Customers

21 One Pennsylvania Plaza

22 New York, New York 10119

23 BY: MATTHEW GLUCK, ESQ.

24 -and-

25 JONATHAN M. LANDERS, ESQ.

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2 A P P E A R A N C E S: (Continued)

3

4 PHILLIPS NIZER, LLP

5 Attorneys for The Peskins and Maureen Ebel

6 666 Fifth Avenue

7 New York, New York 10103

8 BY: HELEN DAVIS CHAITMAN, ESQ.

9

10 WINDELS MARK LANE & MITTENDORF, LLP

11 Attorneys for Alan Nisselson Chapter 7 Trustee

12 156 West 56th Street

13 New York, New York 10019

14 BY: ALAN NISSELSON, ESQ.

15 -and-

16 REGINA GRIFFIN, ESQ.

17

18 SECURITIES INVESTOR PROTECTION CORPORATION

19 805 15th Street, Suite 800

20 Washington, D.C. 20005

21 BY: KEVIN H. BELL, ESQ.

22

23

24

25

1 PROCEEDINGS

2 THE COURT: SIPC v Madoff.

3 With respect to the timing of the hearing,  
4 I understand there was a fairly long line outside and that  
5 is why we were delayed. It seems to be no deed becomes  
6 unpunished because I could have expected the courtroom to  
7 be filled up, which it did not.

8 MR. SHEEHAN: Good morning, Your Honor.

9 THE COURT: Good morning, Mr. Sheehan.

10 MR. SHEEHAN: David Sheehan from Baker  
11 Hostetler, on behalf of the Irving Picard as Trustee.

12 We have before Your Honor this morning a  
13 number of applications. As is the normal course we would  
14 deal with those that are unopposed and uncontested first.

15 THE COURT: Certainly.

16 MR. SHEEHAN: At this point we would like  
17 to introduce Alissa Nann from our office.

18 MS. NANN: Good morning, Your Honor.  
19 Alissa Nann, on behalf of the trustee.

20 Your Honor, we have this morning the  
21 Trustee's fourth motion for an extension of time by which  
22 the Trustee may assume or reject certain contracts or  
23 leases.

24 Your Honor, we were last before you on this  
25 issue on July 7, at which time you entered an order

1 extending the deadline to assume or reject to July 31. We  
2 filed the instant motion on July 24th, and a bridge order  
3 was entered by Your Honor on the 27th which extended the  
4 deadline for the assumption or rejection of certain  
5 contracts through today's hearing date.

6 At we explained to the Court the last time  
7 we were before Your Honor, this extension motion is made  
8 based upon a request by a Serge Trading (phonetic), who is  
9 the purchaser of the Debtor's market-making business.

10 They were still in negotiation with Verizon  
11 for certain contracts providing phone and internet  
12 services, and those are the only contracts to which the  
13 extension will apply. They were told they are very close  
14 to coming to a deal with Verizon, and as we also reported  
15 to the Court the last time, Serge will be paying the cost  
16 of the service through the date of the extension, which we  
17 will extend through the 31st and will be covering any  
18 confidential and legal expenses relating to the motion.

19 We have not received any objection to the  
20 motion, and we would ask that it be granted.

21 THE COURT: Are they making payments in  
22 accordance with the basic contract price?

23 MS. NANN: I believe so, yes.

24 MR. SHEEHAN: Yes.

25 THE COURT: Very well.

1                   Does anyone want to be heard?

2                   There is no response.

3                   The application is granted.

4                   MS. NANN:    May I approach, Your Honor?

5                   THE COURT:   Yes, I will entertain it.   I  
6 have approved the order.

7                   MS. NANN:    Thank you, Your Honor.

8                   MR. SHEEHAN:   Thank you, Your Honor.

9                   Your Honor, there are two other  
10 applications for which no objections have been received.

11                  First, I would like to offer my objection  
12 to the application in the Windels motion.   The  
13 representatives for the Windels firm, Mr. Nisselson and  
14 Regina Griffin are here on behalf of that application.

15                  As Your Honor will recall and the record  
16 will reflect, Mr. Nisselson was appointed as Chapter 7  
17 Trustee for Bernard Madoff and his firm was appointed as  
18 his counsel.

19                  Subsequently there was an application by  
20 Mr. Picard for substantial consolidation and a good deal of  
21 the work was engaged in by Mr. Nisselson and his firm in  
22 evaluating the proposals, in the responsibility they have  
23 before them and how they should fulfill them in connection  
24 with our application.

25                  It was found by SIPC and the Trustee that

1 these were a very valuable resource to the overall estate  
2 as well as to the advancement of what we are trying to  
3 achieve in this case. As a result they submitted their  
4 application to our firm and to SIPC.

5 As Your Honor knows from the record that  
6 application has been approved. Obviously, it has been  
7 agreed to by the U.S. Trustee. And more importantly it  
8 was approved by SIPC who will advance the funds from its  
9 SIPA fund to pay the fees and expenses of Mr. Nisselson and  
10 his firm.

11 We would move that application here this  
12 morning, Your Honor.

13 THE COURT: Does anyone want to be heard?

14 MR. BELL: Kevin Bell, for the Securities  
15 Investment Protection Corporation. We have submitted  
16 SIPC's recommendation in support of the application by  
17 Windels Marx. We would ask the Court to grant an order  
18 approving it.

19 THE COURT: It is clear from the prior  
20 order of the Court that the compensation would not be  
21 coming out of any of the estates, that it is coming purely  
22 from SIPC. So there is no charge in any of the funds that  
23 will be made available for distribution either under the  
24 Chapter 7 or SIPC. The application has been granted.

25 MR. BELL: Thank you.

1 MR. SHEEHAN: We have an order in  
2 accordance with the rules of the court. It is an omnibus  
3 form of the order addressing all the fee applications.

4 THE COURT: We will take that up at the  
5 conclusion of the hearing.

6 MR. SHEEHAN: Thank you, Your Honor.

7 The other unopposed application is that on  
8 behalf of the international law firms who have been  
9 retained by the Trustee in connection with his  
10 investigation, and his efforts to obtain assets and return  
11 them to the customer property fund.

I wouldn't go through all the applications, Your Honor, since it is unopposed. As Your Honor is aware through the many applications that were made here over the course of the last several months we have been retaining counsel in Gibraltar, the British Virgin Islands, Bermuda and the United Kingdom and they have been active in assisting us not only in connection with the joint provisional liquidation proceeding in the Court of Great Britain, but also assisting us in these other proceedings. They found those services to be extremely valuable.

22 We have submitted those applications to  
23 SIPC who have reviewed them and also approved them and  
24 submitted an application in support. We believe that  
25 application should be granted, and I would move that

1 application as well, Your Honor.

2 MR. BELL: Kevin Bell, on behalf of SIPC.

3 SIPC has submitted it's recommendation and  
4 is in full support of the Court entering an order approving  
5 the application.

6 THE COURT: Does anyone else want to be  
7 heard?

8 The application is granted.

9 Essentially, with respect to some of the  
10 foreign activities that have been conducted with the aid of  
11 these foreign counsel, there has been some international  
12 recognition including recognition within the UN of  
13 protocols that emanated from this effort. And the UN  
14 guidelines making reference to this activity has recently  
15 been approved by the commission, and I think that has been  
16 a very interesting aspect of some of these efforts. The  
17 application is granted.

18 MR. SHEEHAN: Thank you, Your Honor.

19 The last application is the application by  
20 Mr. Picard, as Trustee, and Baker Hostetler by its counsel  
21 to which there has been opposition filed. Initially, I  
22 would ask that Mr. Picard be allowed to speak with regard  
23 to his application as Trustee.

24 THE COURT: Sure.

25 MR. PICARD: Good morning, Your Honor. I

1 was appointed by Judge Stanton on December 15, when just a  
2 few days earlier Mr. Madoff had been arrested. The SEC  
3 filed a complaint against Mr. Madoff and Madoff Securities  
4 International.

5 Judge Stanton appointed Lee Richards as the  
6 receiver. When that occurred on December 11, Your Honor,  
7 when I was appointed for the Bernard L. Madoff Investment  
8 Securities, which I will refer to as BLMIS, Mr. Richards  
9 was replaced with respect to the Debtor. He continued  
10 with respect to BLMIS until the joint liquidator was  
11 appointed.

12 After a hearing on February 4th of this  
13 year, Your Honor found that both I and Baker Hostetler met  
14 the disinterested standard of the SIPA statute. Today's  
15 hearing, as Mr. Sheehan has stated concerns, interim fees  
16 for four and-a-half months through April 30, Your Honor.

17 My activities are set forth in my  
18 application and I am prepared to provide a summary of some  
19 of the important aspects of it and answer any questions  
20 Your Honor may have.

21 I seek \$759,228.75 for the four and-a-half  
22 month period beginning on December 16.

23 I expended 1,088.5 hours, Your Honor. 20  
24 percent of the amount that I seek will be deferred until  
25 later in the case, that is \$151,845.75, Your Honor.

3 During the period I was operating a portion  
4 of the business. As Your Honor will recall, we tried to  
5 maintain initially the propriety trading and market-making  
6 operations for sale. We ultimately did sell them. We  
7 had retained Lazard Freres to help in the marketing of  
8 that.

9 We reduced the head count initially from  
10 approximately 160 people down to approximately 40 and those  
11 people were really necessary for the market-making  
12 operations. When it became obvious to us in March that the  
13 market-making operations would be sold to any one of the  
14 bidders that we had been talking to without the employees,  
15 we let them go.

22 So from that vantage point those assets are  
23 being managed now by an independent agent, and they are all  
24 well protected.

25 But we are still dealing with the

1 Department of Labor, Your Honor, which is very concerned  
2 about it, and they are doing a review. We will have a tax  
3 return for the 401-K plan that will be filed before the end  
4 of the year, Your Honor.

5 In addition to the business and the sale of  
6 the market-making operations, I have been involved with the  
7 claims and the investment account information, preparation  
8 of determination letters and regular communications with my  
9 consultants and the claim processing agent, application  
10 partners, where the beginning of the claims process is, the  
11 review, research, contacting people when we need more  
12 information.

13 Together with my counsel I have been  
14 involved in a statuary investigation of BLMIS's affairs and  
15 had significant contact with both the FBI, the U.S.  
16 Attorney's office, SEC, FENRA and, of course, the JPLs in  
17 the U.K. We had numerous contacts, I personally as well as  
18 my counsel with various state regulators, as I mentioned  
19 the Department of Labor and other regulatory and law  
20 enforcement agencies.

21 As I indicated, we retained Lazard with  
22 SIPA's approval to help market and sell the market-making  
23 operations. It was a lengthy term. It took probably  
24 longer than we had hoped. But we ultimately were able to  
25 sell it and we have every reason to believe that we will be

1 getting additional monies over the next couple of years  
2 that the purchaser will be successful and the customers in  
3 the long run will benefit from that sale.

4 Your Honor, we also had extensive dealings  
5 with the Depository Trust Clearing Corporation, which held  
6 Madoff securities that were there. There were about 1,600  
7 positions in the account on December 11, and both the DTCC  
8 and the National Securities Stock Corporation were not  
9 ready to release a lot of the securities because there were  
10 close-outs and all sorts of other issues that had to be  
11 resolved. So that was another piece of the operation that  
12 took a lot of time.

13 In addition, a lot of the financial  
14 institutions that were holding money were not ready to  
15 release those funds. It took substantial negotiations.

16 As you may recall, in the early stages of  
17 the case, a number of stipulations were provided to you  
18 which you did approve, whereby when the banks released the  
19 funds they also received certain indemnification rights  
20 from us.

21 So that, again, was a process that took a  
22 bit of time and was not as easy as it might have been in  
23 the typical case where you contact the bank and they say  
24 here it is.

25 I have also had some involvement in

1 Bankruptcy Court litigation, especially in connection with  
2 the foreign countries, and we have made a number of  
3 appearances in the District Court at Judge Stanton's  
4 request in connection with the SEC action.

5 With respect to my fees, Your Honor, I  
6 would like the record to note that I have voluntary reduced  
7 my fees by 10 percent. That is a reduction of about  
8 \$84,000, Your Honor. As I indicated there is a deferral  
9 of about \$150,000 in the laboring case.

10 Also, I did not bill for, I wrote off  
11 approximately 176 hours, which is about another \$123,000.  
12 So in seeking the \$759,228.75, and the approval of payment  
13 of \$607,383, I submit, Your Honor, those are reasonable  
14 requests under the circumstances of this proceeding.

15 As noted at paragraph 33 of my application  
16 and contrary to the implication of certain objections that  
17 have been filed with the Court and before the press, the  
18 amounts that will be rewarded either today or at another  
19 time are going to be turned over to Baker Hostetler, the  
20 firm of which I am a partner. I want to emphasize I will  
21 not retain any portion of the award.

22 I previously reported and can tell you  
23 again that the general estate has been and will continue to  
24 be insufficient to meet the costs of administration  
25 including legal fees. Thus, under all appropriate

1 sections of the statute, SIPC will be required to advance  
2 those funds necessary to pay awards of compensation as it  
3 has other administration costs as this case has moved  
4 along.

5 In its recommendation in support of the  
6 application, SIPC has acknowledged that it will advance the  
7 necessary funds.

8 Accordingly, I request that the Court award  
9 the amounts requested and approved by SIPC.

10 Your Honor, I would like to address a  
11 certain number of objections that have been filed. I will  
12 limit my remarks to factual matters. I do not propose to  
13 respond to personal attacks as its contained in the papers  
14 and filed by certain of the objectors.

15 But my silence, should not be construed,  
16 Your Honor, as an agreement with any of those comments.

17 First, I disagree with the comments that  
18 have been made that SIPC is insurance, rather, when raised  
19 by statute, SIPC provided an advance to the Trustee to make  
20 payments up to the statuary maximum. So that they don't  
21 have to wait until the end of the case, or later on in the  
22 case to get a distribution of.

23 Those advances, Your Honor, are deemed a  
24 supplement to customer property.

25 Number 2. Contrary to allegations in a

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1 number of the objections, Your Honor, I will not be  
2 receiving 3 percent of any recovery. Your Honor has  
3 already addressed that, so I won't belabor that point.

4 With respect to a number of other  
5 objections, questions have been raised about the claims  
6 processing, and why it is necessary to review claims and  
7 research them. That has to do with a disagreement over  
8 the methodology of how claims are being handled.

9 But I like to give you a couple of  
10 examples, Your Honor, as to why it is necessary to review  
11 and research claims.

12 We have many accounts in a single name and  
13 in other names but we get more than one claim for that  
14 account. We just can't pay each account whatever it  
15 claims it should be paid. That has to be reviewed so we  
16 could determine who the right claimant is, et cetera.

17 We have also received claims from customers  
18 that don't comport with the documents that they submitted  
19 or in some cases they just submit a signed piece of paper  
20 with no information. Those all need to be reviewed, Your  
21 Honor, so that we know what the right amount is, who the  
22 right claimant is, et cetera.

23 We have also discovered that several  
24 hundred claimants who should be treated as customers  
25 submitted claims as general creditors. So we now in

1 reviewing all the general creditor claims to right that if  
2 someone was a customer filed the wrong form we don't want  
3 to penalize them, so the claims processing people are now  
4 reviewing that.

5 We have also found that numerous claims  
6 were filed both by customers and by attorneys here with the  
7 Bankruptcy Court, not with the claims agent. As long as  
8 those claims were filed before July 2, which was the bar  
9 date, we are going to honor them. But, again, we had to  
10 collect them from the Court and they have to now be melded  
11 into our system.

12 So I just wanted to give you a little bit  
13 of a flavor of some of the issues that we are dealing with  
14 here. Mr. Sheehan, I am sure we will deal with some of  
15 the other objections.

16 If you have any questions, I would be  
17 pleased to answer them.

18 THE COURT: Thank you.

19 MR. SHEEHAN: Your Honor, on behalf of the  
20 Baker Hostetler we have an application here this morning  
21 for fees in the amount of \$14,662,319, less the 20 percent  
22 retention that Mr. Picard alluded to that the firm has  
23 agreed to. The firm has also agreed to a 10 percent  
24 voluntary reduction of the fees in this case.

25 I will not repeat, obviously, what Mr.

1 Picard has just said or enter into any great detail this  
2 morning what has already been laid out in quite some detail  
3 in the interim report, we submitted the report and it is  
4 available for everyone to see.

5 I think it is important, given the scope  
6 and size this which justifies the reasonable nature of our  
7 application here today to at least highlight to your Honor  
8 some of the things we have encountered here that make this  
9 a very, very unusual case.

10 First of all, this is a case that has been  
11 talked about in the press incessantly and is one that  
12 concerns one of the largest frauds that ever took place in  
13 the United States.

14 That is by any measure absolutely true.  
15 We do know that to be a fact by virtue of the investigation  
16 that has been undertaken here. That investigation doesn't  
17 just require us to look at the November 30, 2008 statements  
18 and end the inquiry with regard to the nature and extent of  
19 the fraud perpetrated by Madoff and his colleagues.

20 Needless to say we have to go behind that.  
21 We have to investigate that clearly and thoroughly, first  
22 and foremost because he is a crook. What are we supposed  
23 to do, Your Honor, rely upon the crook's last statement and  
24 that becomes somehow the be all and end all of how we  
25 investigate this case, would anyone in their right mind

1 make that suggestion?

2                   Obviously, we have to look behind that  
3 fiction and find out what the truth is, Your Honor, and the  
4 truth requires us to look back, look back into time,  
5 recreate exactly what happened.

6                   We know that Mr. Madoff is a liar. We  
7 know that he has lied incessantly throughout his career.  
8 Are we supposed to rely upon his allocations? I don't, Mr.  
9 Picard doesn't. We know it is not true.

10                  We are going beyond that. We are looking  
11 to see everything that we can with regard to each of the  
12 customers. We owe that to all of those customers who left  
13 their money in there relying upon his lies, and they  
14 deserve to have a complete and adequate investigation, so  
15 that at the end of the day, Your Honor, they at least get  
16 back a fair share of what they entrusted to Mr. Madoff.

17                  That requires us to look at hundreds of  
18 thousands of records. These records, as I say, can't be  
19 just the customers' statements. As the SIPA statute says  
20 we need to look at the books and records of the Debtor when  
21 we make this decision and that requires us to look at bank  
22 statements, to be able to trace cash in and cash out.  
23 There were no securities, and that is the bedrock of this  
24 case, cash in and cash out. So at the end of the day we  
25 can't rely on what Mr. Madoff says is in and out, we have

1 to look at bank records, third-party records, counterparts  
2 and everyone else with regard to each claimant.

3 Each claimant here, and there was not very  
4 many of them, are not very new to the scene. Many had  
5 been there for years, if not decades. Many of them had  
6 accounts they received from others, accounts that they  
7 received from their father, their brother, their sister or  
8 some other relative. Well, that account was a fiction.  
9 The father didn't have any cash. What he had was false  
10 profits. His money in was gone years ago. What are we  
11 supposed to do? Just ignore all of that? Accept that? Or  
12 are we supposed to go and investigate that?

13 And that is exactly what we have been  
14 doing, and a tremendous amount of time spent by Baker  
15 Hostetler as well as the foreign counsel and the other  
16 consultants we have hired has been spent on that effort.  
17 And so we could find out what the truth is and make the  
18 payments to those people under the statute, and in  
19 accordance with the law and that is what we are doing.

20 Those customer claims that we received, the  
21 almost 16,000 of those deserve, each and every one of them  
22 to be examined carefully to arrive at exactly what the  
23 facts are, not just to accept facially what one might  
24 suggest should be the be all and end all. Each customer  
25 deserves to have in this horrible situation the ability to

1 know that this Trustee and his counsel have looked  
2 carefully at those records, that we looked at the entire  
3 history of them.

4 We are trying to assist them in accordance  
5 with the statutes, the moneys under SIPA and from the  
6 customers' funds be accumulated by the Trustee in excess of  
7 \$1 billion, soon-to-be 1 billion 5 and growing throughout  
8 the course of the litigation that we commenced in this  
9 case.

10 Our goal is to create the largest customer  
11 fund possible so we could return not just to the people  
12 entitled to the SIPA advantages of \$500,000, but in  
13 significant dollars through the customer fund administered  
14 by Mr. Picard.

15 That requires us to look at the customer  
16 claims carefully, Your Honor. It is suggested that we are  
17 not moving promptly. Promptly is a subjective term. If  
18 someone went in and looked at all the work required to look  
19 at all of this and find out what the background is, I would  
20 suggest we are moving with all due diligence of deliberate  
21 speed, and everything we could do to make this move as fast  
22 as we have. We have already paid out over \$300 million.  
23 We have allowed claims over \$3 billion.

24 Those claims have already been adjudicated.  
25 We have looked at them carefully, finished their claim.

1       Each of those people have received \$500,000 or less  
2       depending on the amount of their allowed claim.

3                   That is just one aspect of this case, Your  
4       Honor, requiring the assistance not only of Mr. Picard  
5       reviewing these and looking at them, but also his counsel  
6       and the people we have hired as our claims agent in it case  
7       as well as other investigative means that we have.

8                   That is just customer claims, Your Honor.  
9       And we have an array of litigation. Some of which has  
10      reached this courthouse in terms of individuals that we  
11      have sued for substantial sums of money that's been  
12      wrongfully received, as we allege, and we allege based upon  
13      a thorough analysis of the books and records. This is  
14      just not a spurious claim. This is one that has been  
15      thoroughly researched by the Trustee and brought to this  
16      Court because we believe that money should be returned,  
17      returned so that they could be distributed equally on a pro  
18      rata basis to all of the legitimate customers and allowed  
19      claims in this proceeding.

20                  We are continuing that investigation, Your  
21       Honor. Your Honor will see over the succeeding months  
22      numerous litigations. This is a case that unlike almost  
23      any other will have more litigation in it than probably any  
24      other case that Your Honor has before you in terms of the  
25      avoidance actions we have been bringing against literally

1       hundreds of people. An argument has been made that we  
2       have somehow done is somehow adverse to some of the  
3       customers.

4                   What I have said publicly, and I will say  
5       here, look at what the Trustee does. The Trustee is not  
6       suing little people. He is not trying to hurt the little  
7       guy. We are suing people who have taken substantial funds  
8       out.

9                   We had settlements, as Your Honor has  
10      approved, at this point, tantamount to 130 million dollars  
11      from a foreign feeder fund, a very significant result in  
12      this case.

13                  In terms of the message it says to other  
14      feeder funds that Mr. Picard will not just look back but he  
15      will do everything he can to bringing the funds into the  
16      estate. That requires the full service of a lot of  
17      attorneys at our firm.

18                  Those records have been detailed and we  
19      have given you this report because we believe we acted very  
20      responsibly and reasonably in pursuing each of these  
21      actions. And not the least is the fact we have this vast  
22      array of international litigation which I suspect, Your  
23      Honor, as time progresses it will become even larger than  
24      the domestic litigation that we have seen.

25                  What we're seeing underlying these

1 international machinations that one could not comprehend  
2 unless you have had access to all the records and see how  
3 this money is moving between the banks, principals and  
4 feeder funds and organizations that have no purpose other  
5 than as to this.

6 This is not suggesting that you could  
7 simply look at a bank statement and make a decision as to  
8 what is occurring, Your Honor. You need to have active  
9 participation by lawyers, investigators and Trustees to get  
10 behind the scenes and find out exactly what is happening,  
11 which has cost us, as Your Honor knows, and which we have  
12 already dealt with today, is the retention of counsel  
13 around the world at this point and it is going to grow  
14 simply because this is a fraud that went on for decades.

15 And the architect of it had an amazing  
16 amount of time to create this fraud. We are  
17 deconstructing it and I think, quite frankly, I submit to  
18 your Honor that the Trustee and his counsel and those he  
19 has retained as consultants have in a very short period of  
20 time unraveled a good deal of what is going on. But that  
21 onion has been has yet to be pierced to its core.

22 At the end of day all work that's detailed  
23 in our time records and all the work we have spelled out in  
24 the interim report will be submitted to you as well as to  
25 the applications we have submitted here today. The detail

1 exactly what I think the Trustee has been doing and why we  
2 have been doing it, the purpose it is accomplishing by  
3 virtue of what we are doing in this case.

4 I do want to talk a bit about the  
5 objections, not because I believe they have any merit. I  
6 think, quite frankly, there's a collateral attack here.

7 One of the objections actually reargued and  
8 we have made this statement to your Honor, essentially a  
9 cause of action that is completed here, the motion to  
10 dismiss is pending. We do not believe this is the forum  
11 for that discussion. It will be briefed and it will be  
12 argued and Your Honor will render a decision as to what the  
13 net equity calculation should be in this case as decided by  
14 the Trustee, but ultimately by Your Honor.

15 But an objection to our fees here is not  
16 the forum in which to discuss those issues, we respectfully  
17 submit.

18 Mr. Picard has indicated there are other  
19 objections, and most of those emanate from a  
20 misapprehension of the law. Unfortunately, there is a lot  
21 of press that is erroneous with regard to the 3 percent  
22 that has actually no application in the SIPA statute and,  
23 Your Honor, has already alluded to that, to the fact that  
24 somehow we are going to get a piece of the action. There  
25 is no basis in the law for that, factually or otherwise.

1 None of these objections are accurate.

2                   Rather than deal with them any further, I  
3 believe at this point Your Honor should just not ignore  
4 them, everyone has an opportunity to come to this Court and  
5 make their position known to your Honor, but respectfully  
6 they should not stand in the way to your Honor granting  
7 your application here today.

8                   Your Honor, that summarily is where I  
9 believe we have come in this case to date. We have a lot  
10 more work to do, but I would respectfully request that Your  
11 Honor approve our application as stated in our paper.

12                   MR. BELL: Kevin Bell for SIPC, Your  
13 Honor.

14                   Let me put in perspective what this case is  
15 about. In the 38 and three-quarter years that SIPC has  
16 been in existence, SIPC has advanced two Trustees 520  
17 million to satisfy the claims of hundreds of thousands of  
18 customers who have filed claims in over 320 liquidation  
19 proceedings.

20                   In this case, Your Honor, through last  
21 night, SIPC has committed to advance \$311 million to  
22 satisfy the customers to whom the Trustee has made the  
23 terminations.

24                   That is more than 60 percent, Your Honor,  
25 of what SIPC has advanced throughout its history in this

1 case.

2 I would expect, Your Honor, that in the  
3 coming weeks that that number, \$520 million will be  
4 exceeded in this liquidation proceeding. That is just the  
5 perspective of the dollars that SIPC is putting out for  
6 customers and the dollar amount that Mr. Sheehan has talked  
7 about of the allowed claims is about \$3.4 billion. That  
8 means there is \$3.1 billion of claims above the SIPC  
9 amount.

10 And the statute clearly requires, Your  
11 Honor, the Trustee and his counsel to be aggressive in  
12 trying to recover each and every penny that Mr. Madoff and  
13 his colleagues took from customers and disbursed worldwide.  
14 That effort is required by the Securities Investor  
15 Protection Act, Your Honor, and by Congress who intended  
16 the Trustee to move forward.

17 Let's go back to the Chandler Act of 1936  
18 and look at how 60(E) is constructed, and we can go back  
19 and look at the legislative history, the paper crisis in  
20 the '60s and we can look at that to see how SIPA was  
21 created.

22 The whole program that Congress set up  
23 where SIPC would advance funds to supplement whatever the  
24 Trustee had in the customer properties. We have submitted  
25 a response to the objections in noting some of the points.

1       But this misimpression about the word "insurance" is  
2       nowhere in the statute. It is misleading. It leads a  
3       lot of the innocent victims to, and I have talked to a  
4       number of them, to have a miscomprehension of what is  
5       happening. SIPC has used its personnel and its resource  
6       to have this happen.

7                   With regard to the Trustee's applications,  
8       let me be very clear. This Court's Order, monthly  
9       compensation procedure order of February 25, set forth the  
10      procedures. The Trustee and counsel have submitted to  
11      SIPC on a monthly basis their invoices. Each page of each  
12      invoice has been read by the SIPC attorney on the case, by  
13      me, as well by SIPC's general counsel, and we have entered  
14      into dialogue with regard to some of the entries, with  
15      regard to services. There have been adjustments made with  
16      regard to some of those entries.

17                   SIPC has filed its recommendation. We  
18       said we look at applications. We look at everything in  
19       this case. The oversight that SIPC has is a public  
20      responsibility.

21                   We had as you see in the response, we set  
22      forth, a complete discussion at Congress when the statute  
23      was amended in 1978. I happen to have been with SIPC for  
24      over 36 years. So I have worked on hundreds of SIPC  
25      liquidation proceedings and on a number of fee

1 applications. I guess the three us, the general counsel  
2 and I have been have an aggregate of 100 years of work on  
3 SIPA matters and on fee applications. So we bring a level  
4 of expertise in reviewing this.

5 So some of the objections, Your Honor, were  
6 by our own people and by bankruptcy practitioners seem to  
7 miss the mark about really what the oversight is here  
8 because this is a public trust that we have that we  
9 represent to the Court in each and every recommendation we  
10 make, particularly in cases where it is a no asset case  
11 because the legislative history shows the complete  
12 discussion of that fact with regard to how Section 5 of the  
13 statute, the compensation provision, was created.

14 SIPC hopefully supports a recommendation of  
15 the Trustee and of the Trustee's counsel with regard to the  
16 applications that are before the Court and I would be  
17 willing to answer any questions that the Court may have  
18 with regard to SIPC's position.

19 THE COURT: Thank you.

20 MR. BELL: Thank you, Your Honor.

21 THE COURT: Does anyone want to be heard?

22 MS. CHAITMAN: I would like to speak now,  
23 Your Honor. My name is Helen Chaitman. I am with the law  
24 firm of Phillips Nizer.

25 I would like to outline in detail the

1 objection that I have filed on behalf of Diane and Roger  
2 Peskin and Maureen Ebel, the basis for which we asked the  
3 Court to set a hearing at which we can prove the facts set  
4 forth in the objection.

5 The objection is, in fact, an offer of  
6 proof of what we would establish at the hearing and we  
7 believe that Baker Hostetler and the Trustee have a  
8 conflict of interest which under the established standard  
9 in this Court disables them from serving in this case and  
10 from receiving any compensation.

11 As a bankruptcy Trustee, it is fundamental  
12 that the Trustee has a fiduciary duty to the customers of  
13 this estate.

14 However that duty, Your Honor, is even more  
15 important here because this is a proceeding under the  
16 Securities Investor Protection Act which as SIPC has  
17 acknowledged was passed in order to protect customers.

18 The protection to the customers under SIPA  
19 is that the Trustee will promptly pay customers up to  
20 \$500,000 in SIPC insurance based upon their last account  
21 statements. That what the statute says, Your Honor, and I  
22 understand that the term SIPC insurance is no longer  
23 embraced by SIPC, but for the Trustee, but, in fact, it was  
24 on the website until this case came down that SIPC started  
25 to ignore the statute under which it was enacted. It was

1 always referred to as SIPC insurance and it is not simply  
2 an advance to customers, it is an advance to customers  
3 where there are no assets in the case. It is a guaranteed  
4 payment to customers up to \$500,000 based upon their last  
5 statements.

6 I have laid out in the objection, Your  
7 Honor, that under the statute there was no contemplation  
8 that people would have to file claims. The Trustee was  
9 obligated to look at the last statements and honor the  
10 claims. Congress understood that there would be SIPA  
11 liquidations involving crooks where the brokers had never  
12 purchased the securities.

13 THE COURT: Let me see if I understand the  
14 thrust of your objection at this point. It is A, there is  
15 some kind of conflict of interest that then disables Baker  
16 Hostetler and the Trustee from remaining on the case. B,  
17 that the distribution scheme as it was espoused is opposed  
18 by you.

19 Frankly, I have read through your long  
20 objection, and I do find it in the main it really  
21 constitutes to the support of the Court for the adversary  
22 proceeding that you brought which will be subject to  
23 further review by this Court now. So you are in an  
24 adversarial position and I don't believe it is the  
25 appropriate for you to use that as the a fulcrum to object

1 to fees here.

2 We will deal with the motion to dismiss,  
3 which is set before the Court when, in September or some  
4 time later on in the month. But the only thing that  
5 really remains with respect to your objection is the  
6 disinterestedness of the Trustee and counsel.

7 MS. CHAITMAN: Well --

8 THE COURT: If you want to speak  
9 specifically to that I will be glad to entertain that.

10 MS. CHAITMAN: I would like to, Your  
11 Honor, because if the Trustee and Baker Hostetler were  
12 acting solely in the interests of SIPC, they would have  
13 handled their retention totally differently.

14 They have defied -- SIPA is not a Chinese  
15 menu where you could take one from column A and one from  
16 column B.

17 The statute mandates prompt payment of  
18 customer claims based upon their last statements. The  
19 statute even prohibits SIPC from changing the definition of  
20 net equity which is defined, in essence, as the last  
21 statement. All of this is laid out in the objection.

22 If SIPC chose not to follow the statute for  
23 the first time in its 38 and-a-half years --

24 THE COURT: That is the issue that is drawn  
25 before me in the adversary proceeding, Ms. Chaitman.

1 MS. CHAITMAN: There is more than that.

2 THE COURT: That is what is before me and I  
3 am not trying that issue today.

4 MS. CHAITMAN: I understand that but the  
5 point is -- SIPC is running expenses at the rate of \$2  
6 million a week. The Trustee and Baker Hostetler are  
7 running expenses at the rate of \$1 million a week.

8 A great portion of those expenses are  
9 solely because they are defying the mandate in the statute.  
10 So by your approving fees, Your Honor, based upon a blatant  
11 defiance of their statuary obligations, you are sanctioning  
12 a conflict of interest.

13 What is important in this case which is  
14 unprecedented certainly in SIPC's history is SIPC is  
15 insolvent. It is incapable of paying its debt as they  
16 become as Marie Shapiro of the SEC commission, testified on  
17 July 14 in Congress --

18 THE COURT: That is hearsay and media  
19 speculation. I am here only with respect to the  
20 appropriateness of granting fees. I am not trying the  
21 other issues, Ms. Chaitman, nor am I interested in what  
22 goes on before Congress because it has no effect except the  
23 laws that Congress passes and Congress did pass a very  
24 peculiar law, if you want to call it that, with respect to  
25 SIPA.

1                   If you look at the wording in the statutes  
2 they are very clear and they give this Court, as a matter  
3 of fact very little discretion.

4                   MS. CHAITMAN: Your Honor --

5                   THE COURT: Do you have anything else, Ms.  
6 Chaitman, that is not in your papers?

7                   MS. CHAITMAN: I have nothing that is not  
8 in my papers, Your Honor.

9                   THE COURT: Thank you.

10                  Is there any response?

11                  MR. SHEEHAN: No, Your Honor.

12                  MR. BELL: No, Your Honor.

13                  THE COURT: Does anyone else want to be  
14 heard?

15                  There is no response.

16                  I have considered all of the responses, all  
17 of the applications here before me today. I find no merit  
18 to the objections.

19                  The last objector, essentially has a  
20 disagreement with respect to the distribution scheme, and  
21 that is an issue which is a matter that will be brought  
22 before me and I would resolve it one way or the other.  
23 But the Court has already held a disinterestedness hearing.  
24 There was no objection at that time and there are no new  
25 facts that have come forward that would change the

1 disinterestedness concept with respect to the fee  
2 application here today.

3 With respect to the responses that were  
4 stated in the objections, they clearly lay out the fact  
5 that there has been nothing shown that this Trustee is not  
6 acting in good faith. That is clear.

7 There is nothing that has been shown that  
8 this Trustee is guilty of any kind of fraud or dereliction  
9 of duty, another very key important factor that the Court  
10 would consider as to whether or not a Trustee should be  
11 removed or his disinterestedness.

12 We come back down to the disagreement in  
13 the approach to handling the case, which is a matter that  
14 is to be determined by this Court in connection with the  
15 adversary proceeding that is pending before me.

16 On the other hand, it has not been shown at  
17 all that the Trustee services have been anything but  
18 necessary, have been reasonable. That have been a product  
19 of decades of massive fraud, and I don't think there is any  
20 real argument that this is the largest fraud committed in  
21 the United States and I don't go back down to anything AD  
22 or that appear in the rest of the world, but I am sure this  
23 comes close to the top.

24 And many of the objections that have been  
25 alleged are based upon the assumption that by granting fees

1 here that in some way it affects the amount of funds to be  
2 distributed. That is absolutely not the case.

3 The statute even reads, and I will quote  
4 from the statutes, in any case which allowance are to be  
5 paid by SIPC without reasonable expectation of recoupment,  
6 therefore, as provided in this chapter and there is no  
7 reasonable expectation of recoupment here, and there is no  
8 difference between the amounts requested and the amounts  
9 recommended by SIPC, the Court awards the amounts  
10 recommended by SIPC.

11 The main word "shall" is included. I am  
12 taken by that because I know the difference between may and  
13 shall. That removes a fair amount of discretion on the  
14 part of the Court when SIPC agrees with and makes the  
15 recommendation with respect to the applications. So there  
16 isn't any real review that court ought to be conducting.  
17 But even if the Court were to it is clear that SIPC is the  
18 payor.

19 SIPC is the one whose ox is gored because  
20 no funds of the claimant or of the victims will be impacted  
21 by the granting of fees here, and it is clear from the  
22 record before me that SIPC has not been supine as an  
23 overseer. And in each case of the applications that have  
24 been run through SIPC, SIPC has reviewed them and has  
25 caused an adjustment, and I assume an adjustment downward

1 in the request.

2 Therefore, there has been the form of  
3 monitoring that Congress envisioned. Now you may fault  
4 Congress for the way it set this statute up. I can fault  
5 Congress in many respects. But I do not have the power or  
6 the inclination to do anything other than to implement the  
7 law that is promulgated and handed down by Congress. The  
8 1978 amendments, for example, strengthened by a factor of  
9 10, the hand of SIPC with respect to the conduct of these  
0 cases.

11 I do not find that any basis for changing  
12 this Court's view of disinterestedness exists, and I am  
13 very familiar with a lot of the activities that have taking  
14 place in connection with this matter.

15 As I alluded to before, this case now  
16 becomes a poster child for across the board litigation in  
17 that the protocols that have been developed and entered  
18 into somewhat at the Court's urging and with respect to the  
19 cooperation of foreign entities who have an involvement  
20 here, those protocols have now found their way into the  
21 international community.

22 And now from the official guidelines  
23 emanating from the United Nation, the Trustee's services  
24 have proven valuable in that regard and, certainly, we all  
25 recognize that the fraud that has taken place over the

1       decades by a convicted felon has mandated a really  
2       extensive forensic activity in order to justify the  
3       administration of this case and the handling of the claims  
4       process.

5               I note that the Trustee has modified his  
6       stance of changing the view of the expectancy in the  
7       granting of claims. And while I don't care much about the  
8       media attention to this case, I can't help but read the New  
9       York Law Journal every morning and reading about there has  
10       been a further relaxation on the distribution scheme in  
11       advancing it.

12               So that the sum of the complaints with  
13       respect to the acceleration and approval has been adhered  
14       to, and that there is a less restrictive approach having  
15       been taken with respect to the dissemination of monies.

16               The long and short of it is that despite  
17       the disagreement of methodology being applied here in this  
18       unique and unusual case, I do find that the services  
19       rendered have been reasonable, that they have been done  
20       responsibly and to this point have been with a salutary  
21       effect.

22               I will approve the application.

23               MR. SHEEHAN: Thank you, Your Honor.

24               THE COURT: Not notwithstanding the fact that  
25       according to the Congressional scheme I don't have even

1 have a choice, as other courts have held. I don't  
2 necessarily agree with that because all I would have to do  
3 if I disagree with the fees is perhaps put them over, but  
4 if I have to put them over and I have no basis to do that,  
5 but if anyone looks at the architect of the SIPA statute  
6 they will see all that does is give SIPC another  
7 opportunity to come back and justify the positions that it  
8 has taken. Another waste of time.

9                   But, again, that is the way Congress wrote  
10 it, and that is the way I will act to administer it.

11                   I will entertain an order.

12                   MR. SHEEHAN: Thank you Your Honor.

13                   May I approach.

14                   THE COURT: Yes.

15                   That is notwithstanding, Mr. Sheehan, one  
16 condition that you are too old to do this. That was  
17 contained in one of the objections.

18                   MR. SHEEHAN: I am just a spring chicken  
19 compared to Mr. Picard, Your Honor.

20                   THE COURT: I have approved the order.

21                   MR. SHEEHAN: Thank you very much, Your  
22 Honor.

23                   MS. NANN: Thank you, Your Honor.

24                   \*           \*           \*

25

1 C E R T I F I C A T E

2

3 STATE OF NEW YORK }  
4 COUNTY OF NEW YORK }  
5

} ss.:

6

7 I, MINDY CORCORAN, a Shorthand Reporter  
8 and Notary Public within and for the State of New York, do  
9 hereby certify:

10 That I reported the proceedings in the  
11 within entitled matter, and that the within transcript is a  
12 true record of such proceedings.

13 I further certify that I am not related, by  
14 blood or marriage, to any of the parties in this matter and  
15 that I am in no way interested in the outcome of this  
16 matter.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand this 7th day of August, 2009.

19

20

21 \_\_\_\_\_  
22 MINDY CORCORAN  
23  
24  
25